

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5261 of 1996

to

FIRST APPEAL No 5277 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

SONAJI NAGARJI THAKOR HEIR OF NAGAJI DHOLAJI

Appearance:

Mr.P.G.Desai, GOVERNMENT PLEADER for appellant
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE M.H.KADRI

Date of decision: 21/10/97

COMMON ORAL JUDGMENT : (Per: M.H. Kadri, J.)

Admit. Learned advocate Mr. A.J. Patel waives service of notice of admission on behalf of respondents-original claimants. By the consent of the learned advocates for the parties, this group of First Appeals is taken up for final hearing.

As the common questions of law and facts are involved in this group of First Appeals, they are disposed of by the common judgment.

Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated August 31, 1996, passed by the learned Assistant Judge, Mehsana, in the group of Land Reference Cases Nos. 1276/93 to 1292/93, by which the reference court awarded additional compensation to the respondents-original claimants for their acquired lands at the rate of Rs.10/per sq.mtr.

The agricultural lands of the original claimants are situated in village Zaloda, Taluka Kadi, which were acquired for the purpose of Zaloda-Vinayakpura road, by notification under Section 4(1) of the Act, published on June 15, 1991. After following the necessary procedure, an award under Section 11 of the Act was declared by the Special Land Acquisition Officer, by which the original claimants were granted compensation for their acquired lands at the rate of Rs.1.64 ps per sq.mtr. The respondents-claimants, feeling aggrieved by the said award, filed applications under Section 18 of the Act for making reference to the District Court. The said applications were referred to the District Court, at Mehsana, which were numbered as Land Acquisition Reference Nos. 1276 to 1292 of 1993. The above stated land acquisition references came to be transferred to the court of the learned Assistant Judge, Mehsana. The learned Assistant Judge, Mehsana, by order below Exh.6, ordered to consolidate all the reference cases, and Land Reference Case No.1285 of 1993 was treated as main reference. On behalf of the claimants, one Gajabbhai Motiji, who happened to be the claimant of Land Reference Case No.1290 of 1992, was examined at Exh.16.

The learned Assistant Judge, in determining the market price of the acquired land, mainly relied upon awards, Exh.9 and Exh.10, and came to the conclusion that the acquired lands were similar in nature to the lands under awards, Exh.9 and Exh.10, and, therefore, determined the market price of the acquired land at the rate of Rs.11.64 ps. per sq.mtrs. The reference court has also awarded

to the respondents the statutory benefit of Section 23(1-A) of the Act, solatium as per the amended provisions of Section 23(2) of the Act, and interest as per the amended provision of Section 28 of the Act. The reference court directed that 5% towards government share be deducted from the awarded amount in respect of the acquired lands, which were 'new tenure lands'. Copies of awards, Exh. 9 and Exh.10, have been placed on the record of these appeal. The learned advocates have also produced relevant oral as well as documentary evidence during the hearing of these appeals.

Award, Exh.9, is in respect of the land of village Kasva, which was acquired for the purpose of Vidhaj Khaswa approach road. Notification under Section 4(1) of the Act was published on September 22, 1983. The reference court, namely, learned Extra Assistant Judge, Mehsana, by his judgment and award dated July 20, 1993, determined compensation of the acquired land of village Khaswa at the rate of Rs.11/- per sq.mtr.

Award, Exh.10, relates to the land of village Nerada, which was acquired by notification under Section 4(1) of the Act, published on December 2, 1987. The reference court, in award, Exh.10, determined the compensation at the rate of Rs.11/- per sq.mtr.

The learned Government Pleader, after enquiring from the concerned authorities, has made statement before the court that no appeals were filed by the acquiring body of the State of Gujarat, against awards, Exh.9 and Exh.10, and, therefore, the awards, Exh.9 and Exh.10, have become final as they were not challenged in any higher forum.

The claimants witness deposed that the boundaries of village Khaswa and Nerada are common and adjacent to the acquired lands. Notification under Section 4(1) of the Act, in the case of award, Exh.9, was published on September 22, 1983, whereas notification under Section 4(1) of the Act, in the case of award, Exh.10, was published on December 2, 1987. Compensation of the acquired lands, which were subject matter of awards, Exh.9 and Exh.10, was determined at Rs.11/- and Rs.12/-, per sq. meter, respectively. In our opinion, the reference court was justified in relying upon awards, Exh.9 and Exh.10, in determining the market price of the acquired lands of village Zaloda. It is settled legal principle that, while determining the compensation of the acquired lands, one of the modes is the awards of the earlier reference cases, with reference to the lands having similar situation and fertility, which are the

relevant piece of evidence, as propounded by this High Court as well as the Apex Court. The reference court, in determining the market price of the land, has, mainly, relied upon the awards, Exh.9 and Exh.10, and awarded compensation of the lands of village Zaloda, at Rs.11.64 ps per sq.mtr. The Land Acquisition Officer had awarded compensation of the acquired lands at Rs.1.64 ps. per sq.mtrs, which was at quite lower side. Therefore, in our opinion, the compensation determined by the reference court at the rate of Rs.11.64 ps. per sq.mtr of the acquired land of village Zaloda is quite just and proper and deserves to be confirmed.

Grant of statutory benefits to the claimants under Sections 23(1-A) and 23(2) of the Act and interest as per the provisions of Section 28 of the Act, is also quite legal and proper and deserves to be confirmed.

The reference court has ordered to deduct 5% of the government share with respect to the lands which were new tenure lands. Direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands is erroneous, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904. Question arose before the Supreme Court as to whether the government can deduct any amount from the compensation which was payable to the owner whose lands were compulsorily acquired under the Act. The Supreme Court, after considering the scheme of Section 43 of the Bombay Tenancy & Agricultural Lands Act and Section 23(1) of the Act, held that, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 13 does not arise and the State is not entitled to deduct any amount from the compensation which was awardable to the claimants-owners.

It is submitted by the learned Government Pleader that the above direction of the reference court does not require any interference, as the claimants have not filed any cross appeals against the above direction.

In our opinion, the submission of the learned Assistant Government pleader is devoid of any merit and requires to be rejected. As per the provisions of Order 41, Rule 33, of the Code of Civil Procedure, the appellate court has power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court

notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

In view of the settled legal principle propounded by the Apex Court in Babu Govind Gavate (supra), and in view of the above provisions of Order 41, Rule 33, of the Code of Civil Procedure, the reference court was not justified in deducting the amount of 5% being the share of the Government with respect to the acquired lands, which were new tenure lands. Award of the reference court is required to be modified accordingly.

In the result, the appeals are dismissed with no order as to costs. The common judgment and award dated August 31, 1996, passed by the learned Assistant Judge, Mehsana, in the group of Land Reference Cases Nos. 1276/93 to 1292/93, is modified, accordingly, by quashing and setting aside direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands.

(swamy)